



# Tax News

## August 2011

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## **New - Online Submission Option for Form 589 – Nonresident Reduced Withholding Request**

Beginning August 29, 2011, we can no longer process a faxed Form 589 Nonresident Reduced Withholding Request. You must submit Form 589 online or by mail.

To expedite your request, submit Form 589 online. When submitting an online Form 589, if you also need to submit any type of documentation (i.e., IRS Form 8804-C, Schedule E, expense breakdowns, etc.), you must fax the documentation to us at 916.845.9512. On the fax containing your documentation, you must include your name, taxpayer ID number, and the confirmation number of your online Form 589 submission.

We will process online requests within 10 business days. The online submission option will be available on our website on Monday, August 29. We will process forms received by mail within 21 business days.

For more information on processing changes for withholding forms and payments that begin August 29, 2011, go to [Processing Changes for Withholding Forms and Payments](#).

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## **2011 IRS Tax Forums**

Join your colleagues for three days of informative education sessions, training, and networking. The 2011 Tax Forums feature a full agenda of the latest tax law information, hands-on workshops, networking opportunities, and exhibits of the latest products and services for your business needs.

In 2011, the Nationwide Tax Forum sites include Atlanta, GA; Dallas, TX; Las Vegas, NV; Orlando, FL; San Jose, CA; and Washington DC.

Hear the latest on key federal and state tax issues from top Internal Revenue Service (IRS) executives and leading industry experts. Earn valuable continuing professional education and certified financial planner credits. Select from more than 40 valuable and relevant tax topics.

## **Franchise Tax Board Held Second Quarter Meeting**

On July 7, 2011, the board held its second meeting of the year. The agenda included updates on the second Voluntary Compliance Initiative (VCI 2) and filing season results. Terre Davis presented the VCI 2 update including a discussion of the timeframe for filing which begins Monday, August 1, and ends October 31, 2011. Filing Methods and Budgets Bureau Director, Phil Gray, gave an update of the results of the filing season. Eighty percent of individuals e-filed their return which was up five percent from the previous year, and the average refund was \$840, up \$120 from last year. Our taxpayer call center averaged a 10 minute wait time while the practitioner hotline's average wait time was nine minutes. This year the practitioner hotline answered 10,000 more calls than it did last year. Phil also provided the board with some of the positive comments and feedback we received on our virtual hold and live chat applications. The response to those features has been overwhelmingly positive.

Communications Services Bureau Director, Michelle Fallon, gave an enlightening presentation of our accomplishments using a blue path and red path analogy. The blue path, which represents taxpayers self compliance, is much cheaper and efficient for us to administer while bringing in the majority of the revenue. The red path, with its enforcement activity by us, brings in less revenue, takes longer, and is far more expensive. Michelle gave the Board examples of our customer service outreach efforts using the blue path, particularly into free social media like YouTube, Facebook, and Twitter.

Finally, the Board approved a regulation and several administrative matters before Deputy State Controller, Marcy Jo Mandel, presented Norman Scott with a proclamation of outstanding service. On June 24, 2011, National Business Audit Bureau Director, Norman Scott, left us after 16 years to accept an assignment as Director of Medi-Cal Litigation for the Department of Health Care Services.

## **Redesigned Form 3500 Exemption Application and Booklet**

As we get ready for the 2012 filing season, we would like to announce a draft redesigned Form 3500, Exemption Application, and Booklet.

We redesigned the form and booklet to:

- Increase clarity in the language and flow of the booklet.
- Improve guidance within the instructions in the booklet.
- Provide a more comprehensive checklist to ensure complete exemption application package.
- Include new schedules created for churches, hospitals, and credit counseling organizations.
- Provide space on the Exemption Application for answers (instead of asking to attach statements).
- Provide sample layout for organizing documents to ensure correct language is used for specific types of tax-exempt organizations.
- Assimilate federal exemption Forms 1023 and 1024 when possible.

Do you have suggestions for improving Form 3500 and/or the booklet, such as ideas for making them simpler or easier to understand? [Please let us know.](#)

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## **Interest Rates Increase 2012**

The adjusted interest rate has been determined for the period January 1, 2012, through June 30, 2012.<sup>1</sup> Currently, interest rates are three percent, but will increase to four percent at the first of the year. This rate is compounded daily and accrues with respect to various state taxes including: personal income, corporate income, and franchise. The rate for corporation tax overpayments for the period will remain zero percent.

To find adjusted interest rates, both current and past, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **interest rates**.

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<sup>1</sup> Pursuant to Section 19521 of the Revenue and Taxation Code.

## **Tax Practitioner Hotline Procedure Change – Up to 3 Cases per Call**

In the [May issue](#) of Tax News we informed you that effective April 19, 2011, hotline agents would only be able to assist callers with information on one case per phone call. Since that time, we received many requests from the practitioner community to increase the number of cases we can assist with per call. Starting August 1, 2011, hotline agents will assist you with up to three cases per call. We still encourage you to utilize our self service options for free, secure, online access to your clients' important California state tax information. For more information on our self-service options, see our May issue of Tax News or go to [ftb.ca.gov](http://ftb.ca.gov).

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## **Mandatory E-pay Guidance**

We have received numerous requests from the tax practitioner community to provide more guidance on mandatory e-pay requirement, requesting a waiver from the requirement and requesting a waiver of a mandatory e-pay penalty. Below are some of the steps we have taken and will continue to take to make the transition to mandatory e-pay easier for you and your clients:

- Within a few days of a payment or return posting to our system that “triggers” the mandatory e-pay requirement; we send a notice to the taxpayers. The notice, Mandatory e-pay Program Participation Notice (FTB 4106 MEO), advises the taxpayers they are required to remit future payments electronically, and provides them with their options. The notice includes information on how to request a waiver from the mandatory e-pay requirement.
- To provide enough time for you or your clients to set-up e-pay or to file FTB 4107, Mandatory e-pay Election to Discontinue or Waiver Request, we have added a grace period from the time we mail FTB 4106 MEO, until we assess the initial penalty. If you or your clients are going to request a waiver from the mandatory e-pay requirement, we recommend the waiver request be submitted as soon as possible.
- We give priority to processing FTB 4107 forms. Our goal is to process the form within 30 days of receipt. Currently we are processing the FTB 4107 within 10-

working days. To ensure that your client's FTB 4107 is processed quickly, fax it to us at 916.843.0468. Keep in mind that FTB 4107 is a request for waiver of the mandatory e-pay requirement and is not a request for waiver of the e-pay penalty.

- If you feel that your client's e-pay penalty should be waived or abated for reasonable cause, call the Tax Practitioner Hotline at 916.845.7057 or fax your penalty waiver request to 916.845.9300.
- We offer a payment-by-phone option that qualifies as an electronic payment, for your clients who do not have or prefer not to use computers. For more information regarding this option, go to [ftb.ca.gov](http://ftb.ca.gov) and search for [FTB 4073](#), Mandatory e-pay Pay-by-Phone Authorization Agreement for Individuals.
- We are working with software vendors to ensure they understand how the mandatory e-pay requirement works in order for them to build appropriate interview questions into their programs.
- In addition to the information already included in our tax forms and booklets, we will add language regarding the mandatory e-pay requirement and penalty to all appropriate payment vouchers for the coming filing season. The proposed language subject to change: "Caution: You may be required to remit your payment electronically".

**Mandatory e-pay Information on our website:**

- [Mandatory e-pay for Individuals](#).
- Public Service Bulletin – [Mandatory e-pay for Individuals](#).
- Tax News Articles:
  - [Accessing the Mandatory e-pay Penalty](#) (March 2011).
  - [Accessing the Mandatory e-pay Penalty Begins 2011](#) (November 2010).
  - [Mandatory e-pay Penalty Update: Not Accessed in 2010](#) (January 2010).
  - [Mandatory e-pay](#) (May 2009).
  - [Mandatory e-pay Required for High-Income Individual Taxpayers](#) (November 2008).

## **Ask the Advocate**



### **Does my Corporation Qualify for the First Year Minimum Tax Waiver?**

As you know, each year any C or S corporation doing business in California must file a state tax return and pay the greater of the \$800 minimum tax (Revenue and Taxation Code (R&TC) Section 23153), or the franchise tax (R&TC Section 23151). This is true even if the corporation is formed in a different state and has not qualified by registering with the California Secretary of State (SOS).

Most entrepreneurs know that for their corporation's first tax year, the \$800 minimum tax is waived and the smaller franchise tax, if any, is paid. This is only if their corporation qualified or incorporated with the SOS.

This first-year relief is also available to Limited Liability Companies if they elect to be treated as either a C or S corporation.

However, what many entrepreneurs may not know is that when a corporation does not qualify by registering with the SOS, referred to as a non-qualified corporation, it is not eligible for the first year minimum tax waiver. This is often the case with corporations formed in a different state that are doing business in California.

For example, ABC Corporation formed in a different state, a foreign corporation, on November 1, 2010, began doing business in California in 2010, and had taxable income of \$1,000 from this state. However, ABC Corporation did not register with the SOS until July 2011. Accordingly, for 2010 ABC Corporation is a nonqualified corporation and must file a California corporate return and pay the \$800 minimum tax.

The good news is that a non-qualified corporation may still be able to receive first year relief. Back in 2002, we issued [Technical Advice Memorandum \(TAM\) 20020138](#) that states, in part:

"... [R&TC Section 23153(f)(1)] permits a nonqualified corporation the first year exemption of minimum franchise tax if... it commences doing business in California even though it thereafter qualifies with the Secretary of State within the SOL [statute of limitations]."

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So, back to the example, after ABC Corporation registers with the SOS in July 2011, it may then file a claim for refund of \$711.60 for its 2010 return. The refund amount is the difference between the \$800 minimum franchise tax and the franchise tax of \$88.40 ( $\$1,000 \times 8.84$  percent). Since the claim would be filed within the statute of limitations, we would refund the \$711.60 plus interest.

More good news is that this year we began allowing corporations to e-file the [Form 100X](#) Amended Corporation Franchise or Income Tax Return. For more information go to [ftb.ca.gov](http://ftb.ca.gov) and click on the [Business tab](#).

**Steve Sims, EA**  
**Taxpayers' Rights Advocate**  
*Follow me on Twitter at [twitter.com/FTBAdvocate](https://twitter.com/FTBAdvocate).*



## Event Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We provided this calendar to show the events we are attending.

Education and Outreach			
Speaking Engagements and Small Business Fairs			
August 2011			
Date	Event Association	Subject Matter	Location
4	Board of Equalization	Forms of Ownership	Norwalk
5	CA State Controller's Office	Small Business Seminar	Culver City
10	CA State Controller's Office	Small Business Seminar	Monterey Park
11	Board of Equalization	Forms of Ownership	El Segundo
11	Internal Revenue Services	CA Tax Update	San Jose
19	Board of Equalization	Forms of Ownership	West Hollywood
20	CA Society of Tax Consultants	CA Tax Update	City of Industry
23	CA Society of Tax Consultants	Head of Household and Dependence	Modesto
25	Ventura CPA Discussion Group	CA Tax Update	Ventura
September 2011			
Date	Event Association	Subject Matter	Location
15	CA Society of Enrolled Agents	Register Domestic Partners	Emeryville
21	CA Society of Enrolled Agents	Register Domestic Partners	Fresno
22	CA Society of Enrolled Agents	Register Domestic Partners	Sacramento
27	CA Society of Tax Consultants	Federal vs. State Law	Sacramento
October 2011			
Date	Event Association	Subject Matter	Location
6	Internal Revenue Services	Filing - Employee vs. Contractor	Oxnard
18	CalCPA Central Coast Chapter	CA Tax Update	San Luis Obispo
28	CA Society of Enrolled Agents	Head of Household Audits and Military Non-resident Returns	San Diego

## **Inside FTB**

### **We Want Your Input**

We will conduct an interested parties meeting on Tuesday, August 16, at 1 p.m. on intercompany transactions. We welcome public input regarding proposed amendments to Regulation Section 25106.5-1, regarding proposed amendments to Deferred Intercompany Stock Account provisions to provide additional guidance to taxpayers. To attend this meeting, RSVP by Thursday, August 11, by contacting Colleen Berwick at 916.845.3306 or email [Colleen.Berwick@ftb.ca.gov](mailto:Colleen.Berwick@ftb.ca.gov).

### **Introducing Tax News Live**

In our education and outreach effort to reach our tax practitioner community and small business owners, we are now offering short video segments on topics of interest. Our first video, [New Jobs Credit Still Available](#), is on YouTube. We will list the videos, as well as other products, on the [Tax News](#) webpage at [ftb.ca.gov](http://ftb.ca.gov).

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## **Criminal Corner**

### **18-Year Prison Sentence for Former Bookkeeper**

Jennifer Joann Zito, a former employee of Simi Valley Cycles, was sentenced to 18 years in state prison for stealing close to \$850,000 in cash and vehicles from the motorcycle store and evading state income taxes on the money.

After a three-week trial, the 37-year old Chatsworth woman was convicted of six counts of corporate embezzlement, seven counts of grand theft, and five counts of felony tax evasion or failing to file a tax return.

Judge James Cloninger handed down her sentence on June 3. In addition, he ordered Zito to pay \$1,473,483 in restitution to Simi Valley Cycles. She must also pay us \$186,464 in back taxes, fines, and penalties.

According to authorities, while Zito was the bookkeeper for Simi Valley Cycles, she embezzled the cash to support her equestrian business, Havac Farms, and her extravagant lifestyle. She also stole five vehicles from the company by pretending to

pay for them with checks that she failed to deposit in the business' bank account. In addition, Zito stole a motorcycle that she sold to an unwitting party.

Authorities said she doctored records from 2001 to 2006 to cover herself. She also failed to declare any of the stolen money on her personal state income tax returns.

The Ventura County district attorney's office's Bureau of Investigation, the Simi Valley Police Department, and we investigated the case. Zito was arrested for her crimes on July 22, 2009.

While Zito was sentenced to pay nearly \$1.5 million in restitution, it will be difficult for her to pay that amount from state prison, and the victim will likely not recover the whole amount.

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## **Big Business**

### **Determining the Limited Liability Company (LLC) Annual Tax and Fee**

Original: August 1, 2011  
Modified: August 17, 2011

California imposes on all LLCs classified as partnerships or disregarded entities both an annual tax of \$800 and an annual fee based on the LLC's total income.

The LLC annual tax is similar to the corporate minimum franchise tax as both taxes are imposed for the privilege and protections of doing business in California. The \$800 LLC annual tax is due on April 15 of each year for calendar year LLCs, and on the 15th day of the 4th month of the taxable year for fiscal year LLCs.

The annual fee; however, is a graduated fee based on the LLC's total income from all sources derived from or attributable to this state plus the cost of goods sold under R&TC Section 17942. Presently, we are reevaluating the computation of total income under R&TC Section 17942.

An LLC that elects to be treated as either a C or S corporation will determine its tax under California Bank and Corporation Tax Law, so they are subject to the \$800 minimum franchise tax under R&TC Section 23153, or the franchise tax under R&TC Section 23151, or the corporation income tax under R&TC Section 23501.